

June 21, 2005
Committee on Rules and Administration

Hearing Testimony: Voter Verification in the Federal Elections Process

Chairman Senator Trent Lott, Ranking Member Senator Christopher Dodd, and Members of the Senate Committee on Rules and Administration:

Thank you for the opportunity to submit testimony and appear before you. I'm Jim Dickson, Vice President of Government Affairs for the American Association of People with Disabilities (AAPD). AAPD supports secure, accurate and independent voting for all Americans and full implementation of the Help America Vote Act (HAVA) as does every member of the Disability Vote Project Coalition.

People with disabilities make up approximately 20% of the population and there are approximately 37.5 million voting aged Americans with disabilities, less than half of whom actually vote. Most people with disabilities have invisible disabilities. For every noticeable blind person, there are 9 individuals whose vision is so poor that they are unable to read standard print. Most people with multiple sclerosis do not have to use a wheelchair all of the time. The disease does limit or prevent people from walking normal distances or climbing and descending stairs. The same is true for people who have hypertension and asthma.

The disability and civil rights communities oppose opening up HAVA for any amendments. The passage of the Help America Vote Act was a huge step forward for the nation's largest minority. For all Americans, the law made significant improvements to our voting system. Election officials are hard at work implementing HAVA's historic features. Changes to our voting system must come incrementally. We need data based on real life experiences before the law is amended. Amending HAVA would be like trying to change the tires on a car traveling while traveling on an interstate at 60 mph.

The Voter Verified Paper Audit Trail (VVPAT) is a theory. It has barely been tested in actual elections. It is dangerous to the health of our Republic to force into our already complex voting system a mandate that is unproven. All of HAVA's changes were based on actual voting place experience carried out in the states. Before Congress mandates a VVPAT, it must be proven to work at the local and state level. We need scientific and empirical proof that a VVPAT actually works and can be accessible before Congress acts.

The disability and civil rights communities supports safe, accurate, secure, and accessible voter verification systems. The only way to meet these four objectives for accessible voter verification systems is to test the system under actual election circumstances in a variety of settings, communities, and elections.

AAPD is the nation's largest cross-disability organization with over 100,000 members. I chair the Disability Vote Project Coalition with 38 national member organizations. They are:
American Association on Mental Retardation

American Association for Respiratory Care
American Association of People with Disabilities
American Council of the Blind
American Counseling Association
American Disabled Attendant Programs Today (ADAPT)
American Foundation for the Blind
American Network of Community Options & Resources
Association for Education & Rehab of the Blind & Visually Impaired
Bazelon Center for Mental Health Law
Blinded Veterans Association
Brain Injury Association of America
Disability Rights Education and Defense Fund
Easter Seals
Epilepsy Foundation
Family Voices
International Association of Jewish Vocational Services
International Association of Psychosocial Rehab Services
National Alliance for the Mentally Ill
National Association of Councils on Developmental Disability
National Association of Protection and Advocacy Systems
National Association of School Psychologists
National Council on Independent Living
National Industries for the Severely Handicapped (NISH)
National Mental Health Association
National Multiple Sclerosis Society
National Organization on Disability
National Parent Network on Disabilities
National Spinal Cord Injury Association
Paralyzed Veterans of America (PVA)
Self Help for Hard of Hearing People
The American Occupational Therapy Association, Inc.
The ARC of the United States
The Association for the Severely Handicapped (TASH)
The International Dyslexia Association
The Learning Disabilities Association of America (LDAA)
United Cerebral Palsy
United Spinal Association

Regarding HAVA's requirement for one accessible voting machine in every polling place by January 1, 2006, there is a misperception that states are rushing to purchase accessible touchscreen voting machines. This is not factually true. In a forthcoming report, Election Data Services and AAPD will document that 14% of voters had access to an accessible touchscreen in last year's presidential election. In fact, the overwhelming majority of states and counties are putting off the purchase of accessible equipment because of the Voter Verified Paper Audit Trail (VVPAT) hysteria.

Unfortunately, the number of disabled Americans who can vote secretly and independently on accessible voting machines, as HAVA requires, has significantly decreased.

- In California, as of July 1, 2005, it is illegal to continue to use the accessible touchscreens that were available to 44% of the State's citizens.
- Miami-Dade County has removed accessible touchscreens from all of its polling places.

There are numerous other examples. In all cases, the reason for removing accessible voting equipment, purchased with federal dollars, is the insistence that these machines have a VVPAT ballot. Accessible touchscreens that conform to the 2002 Voting System Standards (VSS) are the only existing federally certified voting systems that meet HAVA's disability access requirements. Most touchscreens in use in the United States are not accessible and use old and obsolete technology.

In 2001, CalTech and MIT reported that obsolete touchscreens had an error rate which was worse than punchcards. In 2005, CalTech and MIT reported that accessible touchscreens in Georgia achieved an error rate of less than 4/10 of 1 percent. Accessible touchscreens are the most accurate voting system available today. For instance, in one North Carolina county, an old, inaccessible electronic voting machine failed to record over 4,000 votes. Had an accessible touchscreen machine been in use, the machine would have automatically shut off when its memory was full. With this security feature, accessible touchscreens bring accuracy and consistency to the voting process when machines conform to the 2002 Voting System Standards. In other words, accessible touchscreens count more votes more accurately than any other voting system.

Supporters of a VVPAT claim to support access for voters with disabilities. In state after state, county after county, they have prevented jurisdictions from purchasing equipment that meets HAVA's January 1, 2006 deadline. From the hysterical supporters of the VVPAT, we continuously get lip service about supporting accessible, secret and independent voting and organized efforts which prevent it. VVPAT supporters will claim that accessible VVPATs will be available soon. This is nonsense. They have never laid out a timeline or offered a date certain for the availability of accessible VVPATs.

There are no federal standards for a VVPAT. The process of developing standards and machines has just begun. The last time Voting System Standards (VSS) were developed, it took 5 years. It then takes industry years to develop and produce equipment that meets the new standards. 2 years ago, the VSS were adopted. Today, only 4 of the machines have been certified to this standard. It takes years to develop standards, additional years to develop conforming equipment, and additional years to certify and manufacture the equipment. An election director who wants to procure new voting equipment needs between 12 and 18 months from the point of purchase to actual deployment in a high turnout election.

VVPAT supporters want the paper ballot to be counted in runoffs and close elections. Prototype VVPATs use rolls of 3.5 inch wide thermofax paper, remember the old faxes you used to use? It is impossible to accurately and quickly count votes on this type of paper. Sacramento County, California tried. It took nearly 250 person hours to count approximately 2000 ballots. The supporters of the VVPAT have yet to demonstrate that these paper trail ballots can be counted efficiently and accurately. Boosters of the paper trail ignore 200 years of electoral error and

fraud stemming from the use of paper. Professor Michael Shamos of Carnegie Mellon points out that a major flaw with VVPAT is problems associated with the chain of custody of paper ballots.

There are proven methods of verifying the accuracy of the touchscreen. Parallel monitoring has been used in several jurisdictions and each time, the machines had a 100% accuracy rate. Parallel monitoring randomly selects touchscreen machines on Election Day. Auditors vote on these machines and the accuracy of the machines recording the votes are checked in real time during the election.

In order for people with disabilities to be able to vote, we must run a gauntlet of physical and attitudinal barriers that often frustrate, humiliate and embarrass voters. I personally have had five experiences and my colleagues have had hundreds of thousands, if not millions of such negative experiences. Because I had to rely on third-party assistance to read the ballot, I had a pollworker say to me loud enough for everyone in the polling place to hear, "You want to vote for who?" I had a pollworker tell me, "Nobody understands these referenda. I'm really busy so we'll just end your voting now." Several of my blind colleagues also had the experience of a pollworker saying to them, as one did to me, "I can't read this small print, so let's stop here." That did not evoke much sympathy from me.

As part of the 2004 Election Protection Coalition, the coalition collected 2,429 disability complaints, which is far from complete as there are still reports from states that have not been added to the database.

In Ohio, a voter on a respirator and who uses a wheelchair, waited in line for hours. He did not have enough oxygen to stay in the long line and vote. He asked if he could get to the front of the line to vote, was told NO, and had to leave the polling place without voting.

In addition to painful experiences like these, millions of Americans who use wheelchairs, walkers, and while able to walk, cannot climb stairs, can't even get into the polling place. In 1984, Congress passed the Accessible Polling Place Act for the Elderly and Handicapped. 16 years later, during the 2000 election, the Government Accountability Office scientifically surveyed the nation's polling places for access on Election Day. Findings showed 84% of polling places were not accessible. For example, five years later, there has been some improvement, but not much. In Missouri, after finally surveying every polling place in 2004, 71% of polling places are not accessible. Ohio is one of several states that has not yet even begun to survey its polling places for physical accessibility.

Considerably more than half the polling places in this country are still inaccessible to people with physical and mobility disabilities. Lack of access includes the obvious, polling places that only have stairs, doors that are too narrow for a wheelchair to pass, lack of accessible parking, etc. Many of the physical barriers are thoughtless to the point of irresponsibility, such as having an accessible building and placing barriers in the line of travel.

For example, on November 2 in Washington, DC, a polling place had a ramp; the doors were not able to open because the accessible voting machine was placed in front of the doors. When advocates asked if the accessible voting machine could be moved, the pollworkers said no. One

of the most common problems is nonexistent, poorly placed and downright misleading signage. There is an accessible entrance to the building but there is no directional sign pointing the way. After every election, we get complaints about polling places concerning signage that incorrectly directs people to the accessible entrance. Similarly, after every election, there are cases where the accessible door is locked and “cannot be unlocked”. We understand that, from time to time, polling places must be moved. We have reports of polling places that have been moved from an accessible location to an inaccessible location.

Curbside voting does not work and is discriminatory. Able-bodied voters can choose to vote absentee or at the polling place and people with disabilities must have the same opportunity to choose. For example, in every election, we get reports of voters being told by pollworkers they were too busy to offer curbside voting. Voters are also told--come back later--vote absentee--go to the county board of elections office.

In the State of Tennessee, the city of Nashville has made all of its polling places accessible. It's too bad that the rest of the state population doesn't live in Nashville. Regarding insensitivity, curbside voting is illegal while curbside hunting is made available for people with disabilities.

How many times can we expect a voter to experience these types of situations before the voter stops voting?

Last year, AAPD, with our grassroots colleagues across the nation, compared our member and client lists with the state voter registration files. More than 1.7 million individuals with disabilities were identified, and of the records compared, 55.7% were not registered to vote. Section 7 of the National Voter Registration Act (NVRA) requires that state funded agencies primarily providing services to people with disabilities must offer the opportunity to register to vote during intake and recertification procedures. Implementation of this requirement is uniformly infrequent, sloppy, and in some states and agencies, has never occurred.

The HAVA requirement for new statewide voter registration databases offered the opportunity to fix this problem and include these agencies in the new electronic, interactive voter registration system. States have not included this feature in their requests for proposals. More than a dozen states claim to comply with HAVA's voter registration list requirements, and of these, only Kentucky complies with Section 7 of the NVRA. There are currently state systems under development which do not comply with this requirement. To my knowledge, there is not a single pending request for proposals that complies with Section 7 of the NVRA.

Recommendations:

- Complete access for people who have physical, mental, and sensory disabilities, to include voter registration, voting processes, and vote verification. Laws have been passed with the intention of facilitating the ability of voters with disabilities to cast a vote. These laws are often ignored and implementation has been consistently delayed. 21 years after the passage of the Accessible Polling Place Act, the majority of polling places are **not** accessible. 12 years after the passage of the National Voter Registration Act, poor people and voters with disabilities are **not** being offered the opportunity to register to vote in social service offices. The accessibility deadlines for HAVA have not

yet arrived and we have organizations like the National Association of Secretaries of State and the National Association of County Organizations lobbying Congress to postpone HAVA's deadlines. If accessible voting is to become a reality, then the Election Assistance Commission must have the authority to withhold funds if a state or county is not accessible. The Department of Justice Disability Rights section needs additional funding to enforce compliance.

- Permanent and on-going federal funding for the administration of elections. Under HAVA, Congress allocated funds for elections research and development of new voting systems. To date, Congress has failed to appropriate any funds for research and development. The federal government must provide cash strapped counties and states with funds to conduct federal elections.
- Data collection and fact-based decision making regarding election administration and equipment. The federal government should support in every state a university based elections research and support center. In Georgia, Kennesaw State University has done an outstanding job with the statewide accessible touchscreen voting system. In addition to addressing the technology needs of elections, these centers could assist with other parts of our election process. The law school could provide assistance in writing contracts, using the expertise of professors who specialize in technology. The education department could provide assistance in developing public education programs, as well as pollworker training materials and procedures. The business school could analyze the election offices, their administrative procedures and personnel functions. Lastly, because each state has its own laws and procedures, there is need for a university elections center in each state.

The federal government, through our universities, supports just about every other aspect of American life. The federal government supports research and development for business and agriculture; for science and education, why not support the administration and conducting of elections?

Thank you for this opportunity and I look forward to working with you as you prepare your report.

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Jim Dickson is Vice President for Governmental Affairs of the American Association of People with Disabilities (AAPD). He leads the AAPD Disability Vote Project, a broad coalition of 38 national disability-related organizations to close the political participation gap for people with disabilities. The project focuses on election reform, polling place access, voter registration, education and get-out-the-vote drives. Jim has over 20 years' experience with voting and election administration issues.

Jim co-chairs the Leadership Conference on Civil Right's Election Reform Task Force. For two years, Jim worked actively in drafting the Help America Vote Act of 2002. He is also a member of the Election Assistance Commission's Board of Advisors. Before assuming his position at AAPD, Jim directed the National Organization on Disability's VOTE! 2000 Campaign. Over 2

million new voters with disabilities exercised their franchise for the first time in the 2000 Presidential election. Jim was co-founder of Project Vote!, a national, non-partisan voter registration and education organization that has registered over four million African-Americans.

Jim, a graduate of Brown University, resides in Washington, DC with his wife and daughter.